

N.D.A.G. Letter to Gregg (April 22, 1985)

April 22, 1985

Mr. John R. Gregg
Bottineau County State's Attorney
P.O. Box 26
Bottineau, North Dakota 58318

Dear Mr. Gregg:

Thank you for your letter of January 31, 1985, asking whether the Bottineau County State's Attorney must represent the Bottineau County Weed Board. Please accept my apology for the delay in responding.

In your letter, you referred to an opinion letter issued by the Attorney General on May 9, 1984. Inasmuch as this letter differs with the opinion stated in the May 9, 1984, letter, the May 9 letter is superseded by this letter.

N.D.C.C. §11-16-01 states, in part, as follows:

11-16-01. DUTIES OF THE STATE'S ATTORNEY.--The state's attorney is the public prosecutor, and shall:

* * *

5. defend all suits brought against the state or against his county.

* * *

9. Give, when required and without fee, his opinion in writing to the county, district, township, and school district officers on matters relating to the duties of their respective offices.

* * *

12. Act as legal adviser of the board of county commissioners, attend the meetings thereof when required, and oppose all claims and actions presented against the county which are unjust or illegal.

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Although the county weed board is appointed by the board of county commissioners (see, N.D.C.C. Ch. 63-01.1), there are no statutes specifically requiring that the state's attorney represent the county weed board. Former N.D.C.C. §63-01-08, now repealed, required

the state's attorney to enforce the penalty provisions of N.D.C.C. Ch. 63-01 (also repealed). That section has been the only specific statutory link of state's attorneys to the activities of controlling weeds in the counties.

Generally, public officers may only exercise those powers which are conferred upon them by law. In general, the powers and duties of officers are prescribed by the constitution, a statute, or both, and they are measured by the terms and necessary implication of the grant and must be executed in the manner directed by the officer specified. 63 Am. Jur.2d, Public Officers and Employees, §300 (1984). See also, 17 C.J.S., District and Prosecuting Attorneys, §10 (1959).

The state's attorney represents the county generally in all matters of law, investigates claims against the county, draws contracts relating to the business of the county, and gives legal opinions in matters of law in which the county is interested. The state's attorney also represents the board of county commissioners and defends the county unless directed by the board to do otherwise. 17 C.J.S., District and Prosecuting Attorneys, supra, at §12(1)(a). It has been held that the state's attorney is the attorney and legal advisor to county officials in all matters pertaining to the official business of the county.

Id.

Even though the state's attorney has no specific statutory duty to represent the county weed board or give advice to them, the county weed board is appointed by the board of county commissioners and is the county weed control authority (N.D.C.C. §63-01.1-04). The power and duty of the state's attorney to generally advise the county weed board on their duties in regard to county weed control matters can be implied from the specific grant of duties found in N.D.C.C. §11-16-01(9). The state's attorney has a general duty to advise any and all county officials in regard to the duties of their respective offices. However, the state's attorney does not have the duty or authority to represent the county weed board in civil actions without a specific statutory grant of such power and duty.

In a letter dated January 22, 1974, addressed to Mr. Wallace Fuchs, clerk, Mandan School District, this office stated that the state's attorney "must give his opinion in writing, when requested, on matters relating to the duties of school district officers," but that he "is entitled to charge for additional services rendered such as representing the school district in court, preparing bond issues, etc." This opinion was followed in letters to school district officials on May 7, 1975, and May 19, 1984.

Therefore, the state's attorney has the power and duty to provide general legal advice in writing, when requested, to the county weed board on matters relating to their duties. However, unless some other agreement is made with the board of county commissioners to provide legal representation, the state's attorney has no duty to represent the county weed board in legal actions or provide additional legal services. The board of county commissioners could employ the state's attorney, an assistant state's attorney, or other private counsel on a contractual basis to represent the county weed board. Of course, the

county weed board may employ private counsel which, in some counties, could be the state's attorney.

Sincerely,

Nicholas J. Spaeth

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